

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES :
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-against- : **POST-CONFERENCE**
LUKA KLASINC, : **ORDER**
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Defendant. : 21 Cr. 443 (AKH)
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ALVIN K. HELLERSTEIN, U.S.D.J.:

On March 10, 2022, I held oral argument of Defendant Luka Klasinc's motion to suppress (ECF No. 29). For the reasons stated on the record and set forth below, Defendant's motion is denied.

An objective evaluation of the circumstances leads to the conclusion that Klasinc voluntarily consented to the search. *See Florida v. Jimeno*, 500 U.S. 248, 251 (1991). While Klasinc argued his inability to fully understand English and his lack of familiarity with the U.S. legal system rendered his consent involuntary, that is belied by the record. During a two-hour interview, Klasinc conversed with the agents conducting the interview without expressing any problem understanding or answering questions. The relevant exchange took place approximately 90 minutes into a two-hour interview, and the parties do not dispute that the interview was not long, further weighing against granting the motion. The agents asked Klasinc for his consent to search his phone multiple times, and on each occasion Klasinc responded that he consented to the request. Klasinc was presented with a consent form, which he read aloud, indicating he could read and understand English. Additionally, the agents conducting the interview were aware that Klasinc conducts his business in English, further contributing to their reasonable

belief that Klasinc was capable of understanding their requests for consent. *See United States v. Garcia*, 56 F.3d 418, 423 (2d Cir. 1995).

In his motion, Klasinc also requested an order requiring the Government to disclose, 60 days in advance of trial, any evidence subject to Rule 404(b) of the Federal Rules of Evidence. In the Second Circuit, courts typically hold that disclosing Rule 404 evidence is reasonable anywhere from 30 to 60 days before trial, absent a threat to public safety. *See United States v. Reddy*, 190 F.Supp.2d 558, 576 (S.D.N.Y. 2002). The Government has indicated it will move *in limine* to admit any evidence subject to Rule 404(b). Accordingly, I order the Government to disclose any Rule 404(b) evidence it plans to use at trial 30 days in advance of trial, either via motion *in limine* or via direct disclosure to the defense.

Klasinc further requested an order directing the Government to disclose any material subject to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). That request is denied as unnecessarily duplicative. Judge Parker already issued an order on July 20, 2021 to confirm the Government's disclosure obligations. ECF No. 13. Moreover, the Government represented at the July 20 conference and in its brief for the instant motion that it is aware of, and will comply with, its obligations under *Brady* and *Giglio*.

The next conference will take place on April 7, 2022 at 2:30 p.m. in Courtroom 14D, 500 Pearl Street, New York, NY. Time is excluded until then, in the interests of justice. *See* 18 U.S.C. § 3161(h)(7)(A). The Clerk shall terminate ECF Nos. 20 and 39.

SO ORDERED.

Dated: March 14, 2022
New York, New York

/s/ Alvin K. Hellerstein
ALVIN K. HELLERSTEIN
United States District Judge